



C o u n t y o f S a n L u i s O b i s p o

GENERAL SERVICES AGENCY

Janette D. Pell, Director

Guy Savage, Deputy Director - Information Technology

REQUEST FOR PROPOSAL PS- #1125 INTERNET SERVICES

May 17, 2011

The County of San Luis Obispo (County) is currently soliciting proposals for internet services from a facilities based enterprise internet service provider (ISP).

Each proposal shall specify each and every item as set forth in the attached specifications. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the specifications without taking exception may be grounds for rejection. The County reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal process, as long as, in the judgment of the County, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This Request for Proposal is posted on the County's Purchasing website at [http://www.slocounty.ca.gov/GSA/Purchasing/Current Formal Bids and Proposals.htm](http://www.slocounty.ca.gov/GSA/Purchasing/Current%20Formal%20Bids%20and%20Proposals.htm). Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the County. Any addenda will be posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The County is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal.

If your firm is interested and qualified, please submit three hard copies and one (1) electronic copy (on CD or DVD) of your proposal on June 30, 2011 by 3:00 p.m. to:

County of San Luis Obispo
Phill Haley GSA - Purchasing
1087 Santa Rosa Street
San Luis Obispo, CA 93408

If you have any questions about the proposal process, please contact me in writing.

All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to fbeisp@co.slo.ca.us. All questions will receive a response by June 17, 2011. The question and its response will be posted (anonymously) on the County's Purchasing web site located at: [http://www.slocounty.ca.gov/GSA/Purchasing/Current Formal Bids and Proposals.htm](http://www.slocounty.ca.gov/GSA/Purchasing/Current%20Formal%20Bids%20and%20Proposals.htm). The County reserves the right to determine the appropriateness of comments/questions that will be posted on the website.

PHILL HALEY

Buyer – GSA – Purchasing
phaley@co.slo.ca.us

I. LOCAL VENDOR PREFERENCE

The County has established a local vendor preference. When quality, service, and other relevant factors are equal, responses to Requests for Proposals will be evaluated with a preference for local vendors. Note the following exceptions:

1. Those contracts which State Law or, other law or regulation precludes this local preference.
2. Public works construction projects.

A "local" vendor preference will be approved as such when, 1) The vendor conducts business in a fully staffed office with a physical address within the County of San Luis Obispo; 2) The vendor holds a valid business license issued by the County or a city within the County; and 3) The vendor has conducted business at the local address for not less than six (6) months prior to the due date of this Request for Proposal..

Proposals received in response to this Request for Proposal will be evaluated by the Selection Committee considering the local vendor preference described above when quality, service and other relevant factors are equal. The burden of proof will lie with proposers relative to verification of "local" vendor preference. Should any questions arise, please contact a buyer at (805) 781-5200.

	YES	NO
Do you claim local vendor preference?		
Do you conduct business in an office with a physical location within the County of San Luis Obispo?		
Business Address:		
Years at this Address:		
Does your business hold a valid business license issued by the County or a City within the County?		
Name of Local Agency which issued license: _____		

Business Name: _____

Authorized Individual: _____ Title: _____

Signature: _____ Dated: _____

II. PROPOSAL SUBMITTAL AND SELECTION

1. All proposals, consisting of four (4) hard copies and one (1) electronic copy (on CD or DVD) must be received by mail, recognized carrier, or hand delivered no later than 3:00 p.m. on June 30, 2011. Late proposals will not be considered and will be returned, unopened.
2. All correspondence should be directed to:

San Luis Obispo County
General Services Agency
1087 Santa Rosa Street
San Luis Obispo, CA 93408
ATTENTION: PHILL HALEY
Telephone: (805) 781-5904
3. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the proposer.
4. It is preferred that all proposals be submitted on recycled paper, printed on two sides.
5. Selection of qualified proposers will be by an impartial Selection Committee using an approved County procedure for awarding professional contracts. Selection will be made on the basis of the proposals as submitted, although the County reserves the right to interview the proposer as part of the selection process. The proceedings of the Selection Committee are confidential, and members of the Selection Committee are not to be contacted by the proposers.
6. This Request for Proposal does not constitute an offer of employment or to contract for services.
7. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make more than one award, or no award, as the best interests of the County may appear.
8. All documents submitted to the County in response to this Request for Proposal will become the exclusive property of the County and may be returned to the proposer or kept by the County, in the County's sole discretion.
9. All proposals shall remain firm for one hundred twenty (120) days following closing date for receipt of proposals.
10. The County reserves the right to award the contract to the firm who presents the proposal which in the judgment of the County, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the professional service fee.
11. Any contract awarded pursuant to this Request for Proposal will incorporate the requirements and specifications contained in this Request for Proposal. All information presented in a

proposer's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.

12. The successful proposer is expected to execute a contract similar to the contract in Appendix A. This sample contract is for reference to the anticipated terms and conditions governing the County and the successful proposer. The proposer must take exception in their proposal to any section of the attached contract they do not agree with. Failing to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample contract. The County reserves the right, in its sole discretion, to add, delete, or modify, or negotiate additional terms and conditions to the attached contract. **BEFORE BEGINNING ANY WORK OR SUBMITTING A PROPOSAL IT IS ADVISED THAT PROPOSERS READ THE COUNTY INSURANCE AND INDEMNIFICATION REQUIREMENTS IN THE ATTACHED SAMPLE CONTRACT.** The selected proposer will be asked to provide evidence that County insurance requirements have been met. See Appendix A – Sample County Contract, Exhibit A, section 16.
13. Under the provisions of the California Public Records Act (the "Act"), Government Code section 6252 et seq., all "public records" (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon the request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this Request for Proposal, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer's competitive position. If any proposer believes that information contained in its response to this Request for Proposal should be protected from disclosure, the proposer **MUST** specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

NOTICE: *The data on pages _ of this response identified by an asterisk (*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the proposer's competitive position. Proposer requests that such data be used only for the evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under the law. If an agreement is entered into with the proposer, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.*

The County will not honor any attempt by proposer to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the Request for Proposal is protected from disclosure under the Act, proposer shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

14. An electronic copy of your proposal must be included. This electronic copy should include all documents being submitted combined into one Adobe Acrobat (pdf) file on a CD, using this convention for the file name: FIRM NAME + RFP NUMBER

Example: Your firm, Acme Inc., is responding to RFP PS-#1101. Your Adobe Acrobat (pdf) file would be named: **Acme 1101**

15. Tentative Schedule of Events

Date	Event
5/17/2011	RFP Release Date
6/17/2011	Questions Due From Vendors
6/22/2011	Vendor's Questions Answered & Posted on Web
6/30/2011	Proposals Due (Close of Business)
7/8/2011	Vendor Selected

16. The selected vendor will be asked to provide evidence that County insurance requirements have been met. A sample County Contract is contained in Appendix A.

17. Potential vendors may submit written questions as to the intent or clarity of this RFP. All written questions must be e-mailed to fbeisp@co.slo.ca.us with the questions contained in the body of the email or in an attached Microsoft Word document format. The County will not respond to questions submitted in any other manner or format. All questions must be submitted by 5:00 PM PDT on June 10, 2011. If a vendor contacts the County with an inquiry, the County reserves the right to contact the vendor to seek clarification of any inquiry received. The topic of the inquiry and the response will be summarized and placed (anonymously) on the County's public Internet site

[http://www.slocounty.ca.gov/it/\[get new URL\].htm](http://www.slocounty.ca.gov/it/[get new URL].htm)

What to include in a written inquiry (question):

1. Your name, name of your firm, mailing address, telephone number, email address, and fax number (optional).
2. A description of the subject or issue in question or discrepancy found.
3. The RFP section and page number or other information useful in identifying the specific subject or issue in question.
4. Remedy sought, if any.

18. The County will evaluate proposals using the factors described below. Proposals that are late, that do not comply with mandatory proposal instructions or those that take exceptions to mandatory requirements may be eliminated without further consideration. Proposals from vendors who are on a State or Federal Barment list will not be considered. All other proposals conforming to RFP submittal requirements will be given a thorough and objective review, based on the following criteria:

- Local Preference Questionnaire response.
- Quality, attention to detail, and understanding of project scope as provided in the proposal.
- An evaluation of Firm Qualification. The County may request further information regarding the financial stability of the vendor.
- A consideration of the value offered in the cost proposal.
- An evaluation of completed Requirements Matrix.
- An evaluation of project implementation plan, if any.

- Consideration of maintenance and support proposed.
 - Reference checks and possible site visits.
19. The County anticipates reviewing all proposals and developing a list of the top finalists. The County is under no obligation to explain why a vendor was or was not selected as a finalist. The County reserves the right to go back and talk with any vendor at any time. The final vendor will be selected based upon the selection criteria listed above and on possible follow up conversations with the finalists. Upon the conclusion of the finalist process, the County may reject all proposals, or enter into a contract with the selected finalist.

III. PROPOSAL SUBMITTAL FORMAT

A qualifying proposal must address all of the following points and shall be in the format outlined in this section:

1. Project Title

2. Applicant or Firm Name

3. Offer Letter

Proposers must include a letter signed by a representative authorized to commit the proposing entity in contractual matters which includes:

- Project Name
- Applicant or Firm Name
- The offer letter must contain the following statement, "Proposer expressly acknowledges that we have read the indemnification and insurance provisions in the Sample Contract in Appendix A, Exhibit A, and will comply with all terms and conditions as written."
- The offer letter must include an exception to any section of the attached contract the proposer does not agree with. Failing to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample contract.

4. Firm Qualifications

- a. Type of organization, size, professional registration and affiliations.
- b. Is your company a California corporation? If you are a non-California corporation, is your company registered with the California Secretary of State to do business in California?
- c. Does your company have a California street address and telephone number for purposes of Service of Process? If so, please provide the name, address, and telephone number.
- d. Names and qualifications of personnel to be assigned to this project.
- e. Outline of recent similar projects completed. Briefly describe design and project expertise relating to the requirements of the Project Scope, Section IV.
- f. Qualifications of consultants, subcontractors, or joint venture firm, if appropriate.
- g. Client references from recent related projects, including name, address and phone number of individual to contact for referral.

5. Proposed Solution

- a. Executive summary of approach to be taken.
- b. Provide details on how you meet or exceed the requirements listed in this RFP.
- c. Briefly describe the network that is used for providing internet connectivity and services to your customers.

- d. Describe type of equipment that would be used to provide internet services to the County as well as the equipment that would be required at the point of demarcation. Include details about the network hand-off, and provide schedule estimates, if appropriate. Briefly describe the reliability and availability of the customer-facing equipment.
 - e. Briefly describe your company's facilities in San Luis Obispo County that will be used to deliver your proposed solution. *(It is imperative that facilities used to provide internet connectivity are independent and do not use any of the existing Digital West Network, Inc. (DWN) infrastructure as part of the proposed solution.)*
 - f. Provide detailed narrative responses to each of the business requirements listed in section IV. "Project Scope", sub-section 3. "Business (Functional) Requirements."
 - g. Complete and submit the requirements matrix presented in section IV. "Project Scope", sub-section 4. "Requirements Matrix."
 - h. Indicate what information and participation the proposer will require from County staff.
6. Alternative Proposed Solution (Optional)
- Briefly describe how your company can meet the requirements through alternative solutions, if any.
7. Additional Comments (Optional)
- Please provide any other materials, suggestions, and comments you deem appropriate, if any.
8. Provide at least three (3) customer references that use your internet services. References from other California Counties are preferred. The County may be interested in making on-site visits to vendor's facilities.
9. Cost Proposal
- The proposed project costs and duration must be quoted according to the following format. This table breaks down the costs associated with the proposed solution.

Cost Proposal		
Description of Cost	Price	Total
Construction Costs – fiber (including splicing), etc.	\$0.00	
Installation Costs	\$0.00	
Equipment Costs	\$0.00	
Other one-time costs (if any)	\$0.00	
Total Installation/Construction Costs		\$0.00

Description of Cost	Monthly Price	Total
Monthly Internet Services Cost per service level Provide cost matrix for available bandwidth levels with a minimum level of 30 Mbps	\$0.00	
Other monthly/periodic costs (if any)	\$0.00	
Total Service/Period Costs		\$0.00
Alternative Monthly Internet Services Cost		
40 Mbps service level	\$0.00	
100 Mbps service level	\$0.00	
Proposal Duration	Months	
Duration of Costs in months		

When the selected vendor enters into contract negotiations the County has the right to select one or more of these line items in any appropriate combination to meet the needs of this project.

The County prefers a duration for this internet connectivity of twenty-four (24) months with three twelve (12) month extensions. The vendor is encouraged to submit additional cost proposals for other durations that the vendor believes would better suit the County.

The selected proposer will be required to provide insurance coverage as stated in Appendix A, Sample Contract, General Conditions, item #16. This amount of insurance coverage shall be reflected in your monthly price.

IV. PROJECT SCOPE**1. General Information**

The County of San Luis Obispo, General Services Agency - Information Technology (GSA-IT) is soliciting responses to this RFP for the purpose of identifying an internet service provider (ISP) to replace one of the two current internet connections. For further information regarding this project, see section 2 'Project Scope'.

A. The County of San Luis Obispo

Of the current 58 California counties, San Luis Obispo County is one of only 11 original counties established in 1850. San Luis Obispo County has 22 departments and approximately 2,400 employees. Additional County information is available at: <http://www.slocounty.ca.gov/Home.htm>

County of San Luis Obispo Mission Statement:

The County's elected representatives and employees are committed to serve the community with pride and to enhance the economic, environmental, and social quality of life in San Luis Obispo County.

B. County Information Technology Environment

A significant portion of the County network uses fiber optics and there are projects underway to extend the County's fiber optics infrastructure. The County's wide area network (WAN) provides telecommunication services to approximately 35 remote locations throughout the County and provides virtual private network (VPN) capabilities currently supporting 20 small remote sites over the Internet. The County Ethernet network has approximately 3500 nodes.

The GSA-IT maintains a data center with several blade centers, Microsoft local area network (LAN) servers, and a myriad of application specific and hosted customer applications and servers. The Data Center is a physically secure facility with uninterruptible power supply (UPS) power and generator backup. Technical Support staff is available 7:30 a.m. to 5:00 p.m., Monday through Friday, to assist users with problems. Technical Support is also available after hours and on the weekend on an on-call basis.

The county's internet direction is to maintain two independent internet connections which are independent of each other. The current County internet infrastructure is as follows:

<u>ISP</u>	<u>Speed</u>	<u>Type</u>	<u>Location</u>
tw telecom	20 Mbps	Ethernet	Data Center, 976 Osos St. SLO
DWNI	20 Mbps	Ethernet	Social Services, 3433 South Higuera, SLO

The tw telecom internet connection uses County single mode fiber (SMF) from the data center connected to tw telecom fiber at the northeast corner of Bishop St. and Johnson Ave. in San Luis Obispo. The Digital West connection uses County SMF from the Social Services building at 3433 S. Higuera connected to Digital West fiber at Broad St. just north of Tank Farm Rd.

2. Internet (ISP) Project

The goal of this project is to identifying an internet service provider (ISP) to replace one of the two current internet connections. Both internet connections must be physically independent of each other. It is imperative that facilities used to provide the internet connectivity requested in this RFP be independent and not use or share any facility or infrastructure with Digital West Networks, Inc. (DWNI).

3. Business (Functional) Requirements

The proposing vendor must include narrative responses to each of the following business requirements in their proposal's section 5 "Proposed Solution".

1. The County wishes the new internet connectivity to be 30 Mbps or greater and be provided using an Ethernet handoff. The ISP should hand off native Ethernet (IEEE 802.3) data-link layer services.
2. The ISP must provide internet connectivity at the County's GSA-IT Data Center at 976 Osos St., room 400, San Luis Obispo CA. Possible connection points to the County's existing fiber infrastructure are at the corner of Bishop and Johnson Ave., the San Luis Obispo County/City Library network closet, or corner of Walnut and Osos. Alternatively new fiber may be run into building.
3. Locally, the ISP should operate a protected fiber ring, so that a fiber cut will not impact internet service on the ISP's local network. The County understands that the point from the fiber interconnect to the point of demarcation is not redundant or protected.
4. The ISP must be immune from network outages on DWNI's networks in the San Luis Obispo area. Preferably, the local ISP facility is peered with two (2) or more private Internet peering facilities.
5. The ISP must have in use a registered Autonomous System Number (ASN) from The American Registry for Internet Numbers (ARIN), and be able to peer with the County for network routing with Border Gateway Protocol (BGP). The ISP must be willing to accept reasonable BGP announcements from the County. Detailed IP routing requirements will be addressed at a later date.
6. The ISP must have, at a minimum, the following levels of maintenance and support capabilities: toll free 24-hour telephone support, dedicated technical contact at a Network Operations Center (NOC), automated support incident tracking system which should be accessible from the Web, and trouble escalation channels within vendor's organization.
7. The ISP vendor must have telephone support for billing and administrative issues, and should have Web access to the various accounts related to the County's activities with the vendor.

4. Requirements Matrix

Code	Requirement Title	Requirement Description	Must Have	Included Y/N/C	Vendor Response/Comments
1.00	Corporation				
1.10	Business License	Licensed in state of California?	Y		
1.20	Business Address	California Street Address?	Y		
2.00	Facility				
2.10	POP	Local to SLO CA?	Y		
2.20	POP	Facilities Based?	N		
3.00	Fiber Optic Network				
3.10	Fiber backbone	Vendor must not lease or use fiber from Digital West in the San Luis Obispo area.	Y		
3.20	Fiber Interconnect	Vendor connection to County IT building through, existing fiber, interconnect, or new fiber run.	Y		
3.30	Fiber Ring	Local Protected Ring?	N		
4.00	Internet Services				
4.20	Media requirements	Fiber-Optic (long-wave)	Y		
4.30	Data-Link Layer handoff	IEEE 802.3 CSMA/CD (ETHERNET)	Y		
4.40	Bandwidth requirements	30 Mbps or greater	Y		
4.50	BGP peering	Registered ASN from ARIN	Y		
4.60	Internet peering facilities	Geographically redundant?	N		

Appendix A – Sample County Contract**CONTRACT****FOR****INFORMATION TECHNOLOGY SERVICES**

THIS CONTRACT FOR INFORMATION TECHNOLOGY SERVICES ("Contract") is made and entered into by and between the County of San Luis Obispo ("County" or "Licensee"), a public entity in the State of California, and XXX ("Vendor" or "Contractor").

WITNESSETH:

WHEREAS, County is in need of internet services from a facilities based enterprise internet service provider; and

WHEREAS, Contractor has certain prior experience in providing such services and support, and has qualified staff who are trained, experienced, expert and competent to provide special professional services for the appropriate fees and the terms and conditions hereinafter set forth; and

WHEREAS, Contractor has different skills and products than can be produced by County civil service employees; and

WHEREAS, in accordance with Government Code 31000 special administrative services may be contracted;

NOW THEREFORE, in consideration of the covenants, conditions, agreements, and stipulations set forth herein, the parties hereby agree that Contractor shall perform the services described herein for the compensation set forth herein, subject to the terms and conditions set forth herein.

1. General Conditions – The parties agree to the general conditions described in Exhibit A "General Conditions", attached hereto and incorporated herein by reference as if set forth in full at this point.
2. Special Conditions – The parties agree to the special conditions described in Exhibit B "Special Conditions" attached hereto and incorporated herein by reference as if set forth in full at this point.
3. Professional Services – Contractor agree to perform professional services and the parties agree to the terms and conditions related to said professional services in Exhibit C "Statement of Work", attached hereto and incorporated herein by reference as if set forth in full at this point.
4. Other Exhibits – The following Exhibits are attached hereto and incorporated herein by reference:

signatures.//

CONTRACTOR:

[Insert Name]

By: _____

Authorized Signatory

Date

NOTARIZATION

STATE OF _____)

) SS.

On _____ before me, (here insert name and title of the officer), personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires: _____

COUNTY:

COUNTY OF SAN LUIS OBISPO

A Public Entity in the State of California

COUNTY COUNSEL:

Approved as to form and legal effect.

Warren R. Jensen.
County Counsel

By: _____

Deputy County Counsel

Date

COUNTY OF SAN LUIS OBISPO

A Public Entity in the State of California

By: _____

Chair, Board of Supervisors

Date

Attest By: _____

County Clerk and Ex-Officio Clerk
Of the Board of Supervisors

Date

EXHIBIT A – GENERAL CONDITIONS

1. **Independent Contractor.** Contractor, its officers, agents, employees, contractors and subcontractors, shall be deemed to be an independent contractor of County at all times during this Contract. Nothing in this Contract shall be construed as creating a civil service employer-employee relationship, partnership or a joint venture relationship. Nothing in this Contract authorizes or permits the County to exercise discretion or control over the professional manner in which Contractor provides services; provided, however, Contractor's services shall be provided in a manner consistent with all applicable standards and regulations governing such services.
2. **No Eligibility for Fringe Benefits.** Contractor understands and agrees that Contractor and its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, vision, dental, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee. The only performance and rights due are those specifically stated in this Contract or existing as a matter of law.
3. **Warranty of Contractor for Provision of Services.** Contractor warrants that Contractor has obtained and shall keep in full force and effect during the term of this Contract, all permits, registrations and licenses, if necessary, to accomplish the work specified in the Contract. Contractor warrants that it, and each of the personnel employed or otherwise retained by Contractor, will at all times, to the extent required by law, be properly certified and licensed under the local, state and federal laws and regulations applicable to the provision of services herein. Contractor warrants that it has the right to provide the Services hereunder, using all computer software required for that purpose.
4. **Compliance with all Laws.** Contractor warrants that Contractor will observe, comply with, and cause all of its agents and personnel to observe and comply with all federal, state, and local laws, rules, regulations and orders applicable to Contractor in Contractor's performance under this Contract. If any conflict arises between provisions of the scope of work or specifications in this Contract and any law, then the Contractor shall immediately notify the County in writing.
5. **Power and Authority of Contractor.** If Contractor is a corporation or a limited liability company, Contractor represents and warrants that it is and will remain, throughout the term of this Contract, either a duly organized, validly existing California corporation or limited liability company in good standing under the laws of the State of California or a duly organized, validly existing foreign corporation or limited liability company in good standing in the state of incorporation or organization and authorized to transact business in the State of California and have an agent for service of process in California.
6. **Assignment, Delegation or Subcontracting of Contract.** Contractor shall not assign any of Contractor's rights, delegate any of Contractor's duties, or subcontract any portion of Contractor's obligations under this Contract without the prior written consent of the County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under this Contract. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County.
7. **Subcontractors.** Contractor shall not subcontract the services to be provided by it under this Contract, and no subcontracting of the services to be provided under this Contract or any right or interest therein by Contractor shall be effective, without the prior written consent of the County. In the event of any subcontract, Contractor shall remain primarily liable for all of its obligations under the Contract. Contractor is responsible for payment to subcontractors and must monitor, evaluate, and account for the subcontractor(s) services and operations.
8. **Standard of Performance.** The parties acknowledge that the County, in selecting Contractor to perform the services hereunder, is relying upon the Contractor's reputation for excellence in the performance of the services required hereunder. The Contractor shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed.
9. **Waiver.** No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Contract shall impair any such right power or privilege or be construed as a waiver of any default or any

acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

10. **Nondiscrimination.** Contractor agrees that it will abide by all Federal and State labor and employment laws and regulations pertaining to unlawful discrimination prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sexual orientation, disability or national origin, and those conditions contained in Presidential Executive Order number 11246. Any such notice shall be deemed to have been received if: (a) in the case of personal delivery or facsimile transmission with confirmation retained, on the date of such delivery; (b) in the case of nationally recognized overnight courier, on the next business day after the date sent; (3) in the case of mailing, on the third business day following posting.
11. **Indemnification.** Subject to the limitations contained in this Contract, Contractor shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, liability, loss, injury, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, including Contractor, and that arise out of or are made in connection with the acts or omissions relating to Contractor's performance of any obligation or duty provided for or relating (directly or indirectly) to this Contract, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County, provided that (a) the County promptly notifies Contractor for any claim for which it intends to seek indemnity under this Section ("Claim"), (b) the Contractor has the opportunity to assume and control the defense of any such Claim, and (c) the County agrees to provide reasonable cooperation (if necessary) to Contractor in its defense of such Claim.
12. **Intellectual Property Indemnification.** Subject to the indemnification procedures in the next sentence, Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim brought against the County, based on Contractor's alleged infringement of any patent, trademark, copyright or other proprietary rights of a third party, including trade secret rights under the laws of the United States, unless and except to the extent that such infringement is caused by Contractor's compliance with County's specifications or instructions, or Contractor's use of trademarks or data supplied by County. If any third party makes a claim covered by this Section against the County with respect to which the County intends to seek indemnification under this Section, the County shall give reasonably prompt notice of such claim to the Contractor, including a brief description of the amount and basis therefore, if known. Upon giving such notice, the Contractor shall be obligated to defend the County against such claim, and shall be entitled to assume control of the defense of the claim with counsel chosen by the Contractor, and satisfactory to the County. The County shall cooperate with and assist the Contractor in its defense against such claim in all reasonable respects, at no cost to the County. The Contractor shall keep the County fully apprised at all times as to the status of the defense. Notwithstanding the foregoing, the County shall have the right to employ its own separate counsel in any such action, but the fees and expenses of such counsel shall be at the expense of the County. Neither the Contractor nor the County shall be liable for any settlement of action or claim effected without its consent. Following indemnification as provided in this Section, the Contractor shall be subrogated to all rights of the County with respect to the matters for which indemnification has been made.
13. **Late Payment of Charges or Fees.** The Contractor acknowledges and agrees that the County will not pay late payment charges.
14. **Payment.** Payments shall be due according to the compensation plan on Exhibit _____. Payment is due 30 days from the date of the invoice or Acceptance, whichever date is later. Sales tax, if any, shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified on the invoice. Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received upon this Contract and such payment shall be identified upon the Contractor's federal and state identification numbers(s). The County does not pay Federal Excise Taxes (F.E.T). The granting of payment by the County, or the receipt thereof by Contractor, shall not relieve Contractor of its obligations under this Contract.
15. **Disputed Payments.** If, due to either an issue with the charges on an invoice or the Contractor's failure to perform its obligations under this Contract, the County disputes any charge(s) on an invoice, the County

may withhold the disputed amount, provided that (a) there is a reasonable basis for the dispute, (b) all other amounts that are not in dispute have been paid in accordance with this Contract, and (c) the County delivers a written statement to Contractor within five days of the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by the County.

16. **Insurance.** Contractor, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Contract. All of the insurance companies providing insurance for Contractor/Consultant shall have, and provide evidence of, an A.M. Best and Co. rating of A:VII or above, unless exception is granted by the County's Risk Manager, and be authorized to do business in the State of California. Further, all policies shall be maintained for the full term of this Contract and related warranty period if applicable.

Commercial General Liability. Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- a. The County, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Contract.
- b. The insurance provided herein shall be considered primary coverage to the County with respect to any insurance or self insured retention maintained by the County. Further, the County's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
- c. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County.

Business Automobile Policy. Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than \$1 million dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy: "The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County."

Workers' Compensation/Employer's Liability Insurance. Workers' compensation policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy: "Contractor and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this contract. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County." Employer's liability policy shall provide one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

Deductibles and Self-Insurance Retentions. All deductibles and/or self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the County prior to commencement of this contract.

Documentation. Prior to commencement of work and annually thereafter for the term of this contract, Contractor will provide to the County properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this contract. Further, at the County's request, the Contractor shall provide copies of endorsements and certified copies of the insurance policies within thirty days of request.

Absence of Insurance Coverage. The County may direct Contractor to immediately cease all activities with respect to this Contract if it determines that Contractor fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this contract. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense

17. **Availability of Funding.** The County's obligation for payment of any contract beyond the current fiscal year end is contingent on the availability of funding and upon appropriate for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance. If the County notifies Contractor in writing that the funds for this Contract have not been appropriated or provided, this Contract will terminate. In such an event, the County shall have no further liability to pay any funds to the Contractor or to furnish any other consideration under this Contract, and the Contractor shall not be obligated to perform any provisions of this Contract or to provide services intended to be funded pursuant to this Contract. If partial funds are appropriated or

provided, the County shall have the option to either cancel this Contract with no liability to the County or offer a Contract amendment to the Contractor to reflect the reduced amount. County shall provide, in good faith and if reasonably practicable to do so, notice to Contractor at least thirty (30) days in advance of such termination pursuant to this Section.

18. **Force Majeure.** Neither the County nor Contractor shall be deemed in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without limitation: acts of God; rulings or decisions by municipal, Federal, States or other governmental bodies; any laws or regulations of such municipal, Federal, States or other governmental bodies; or any catastrophe resulting from flood fire, explosion, or other causes beyond the control of the defaulting party. Any party delayed by force majeure shall as soon as reasonably possible give the other party written notice of the delay, including the particulars in reasonable detail of the cause of the inability. The party delayed shall use commercially reasonable efforts to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.
19. **Signatory Authority.** Any individual executing this Contract on behalf of Contractor represents and warrants that he/she has full power and authority to enter into, deliver, and perform this Contract on behalf of Contractor, and that this Contract is binding upon said Contractor in accordance with its terms.
20. **Nondisclosure.** All reports, information, documents, or any other materials prepared by Contractor under this Contract are the property of the County unless otherwise provided herein. Such reports, information, documents and other materials shall not be disclosed by Contractor without County's prior written consent. Any requests for information shall be forwarded to County along with all copies of the information requested. County shall make sole decision whether and how to release information according to law.
21. **Conflict of Interest.** Contractor acknowledges that Contractor is aware of and understands the provisions of Sections 1090 et seq. and 87100 et seq. of the Government Code, which relate to conflict of interest of public officers and employees. Contractor certifies that Contractor is unaware of any financial or economic interest of any public officer or employee of the County relating to this Contract. Contractor agrees to comply with applicable requirements of Government Code section 87100 et seq. during the term of this Contract.
22. **Immigration Reform and Control Act.** Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Contract are aware of and understand the Immigration Reform and Control Act ("IRCA") of 1986, Public Law 99-603. Contractor certifies that Contractor is and shall remain in compliance with ICRA and shall ensure that any subcontractors hired by Contractor to perform services under this Contract are in compliance with IRCA.
23. **Third Party Beneficiaries.** It is expressly understood that the enforcement of the terms and conditions and all rights of action related to enforcement shall be strictly reserved to the County and Contractor. Nothing contained in this contract shall give or allow and claim or right of action whatsoever by any other third person.
24. **Fiscal Controls.** Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the *Auditor-Controller Contract Accounting and Administration Handbook*, (Handbook) which contains the minimum required procedures and controls that must be employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this contract, unless otherwise agreed upon in writing by County.
 - a. The Handbook is available at <http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, San Luis Obispo CA, 93408,
 - b. The Office of Management and Budget (OMB) circulars are available at <http://www.whitehouse.gov/omb/circulars>.
25. **Audit Rights.** Pursuant to California Government Code section 8546.7, every County contract involving the expenditure of funds in excess of \$10,000 is subject to examination and audit of the State auditor. Contractor shall permit the State Auditor to have access to any pertinent books, documents, papers and

records for the purpose of said audit. County shall advise Contractor if it becomes aware of such audit at least fourteen (14) days prior to the commencement of the audit. Further, all payments made under this Contract shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits.

26. **Tax Information Reporting.** Upon request, Contractor shall submit its tax identification number or social security number, whichever is applicable, in the form of a signed W-9 form, to facilitate appropriate fiscal management and reporting.
27. **California Public Records Act.** The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information as "CONFIDENTIAL AND PROPRIETARY" and identify the specific pages and sections containing the information. In the event of a request for documents under the CPRA, the County will make reasonable efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents or portions thereof are exempt from the CPRA and desires to prevent such disclosure, Contractor is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in San Luis Obispo County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within the County's deadline to respond, the County may disclose the requested information without obligation to Contractor. If Contractor instructs County to withhold the requested documents, Contractor shall defend, indemnify, and hold the County harmless against any resulting claim, action or litigation, provided that (a) the County promptly notifies Contractor of any claim for which it intends to seek indemnity under this Section, (b) Contractor has the opportunity to assume and control the defense of the claim, and (c) the County agrees to provide reasonable cooperation, if necessary, to Contractor in Contractor's defense of the claim.
28. **Headings.** The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
29. **Entire Agreement and Modifications.** This Contract supersedes all previous contracts between the parties hereto on the same subject matter and constitutes the entire understanding of the parties hereto on the subject matter of this Contract. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in this Contract and no others.
30. **Severability.** Contractor agrees that if any provision of this Contract is found to be invalid, illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Upon determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Contract so as to affect the original intent of the parties as closely as possible.
31. **Non-Exclusive Agreement.** This Contract does not establish an exclusive agreement between the County and the Contractor. The County expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide products, support and service; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support, or service.
32. **Counting Days.** Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.
33. **Time is of the Essence.** Time is of the essence in the delivery of Services by Contractor under this Contract. In the event that the Contractor fails to deliver Products and/or Services on time, and such failure is solely the fault of Contractor, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may purchase or obtain the Products and/or Services elsewhere and the Contractor shall be liable for the difference between the price in the Contract and the cost to the County. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under the Contract with the County. The County's rights and remedies provided herein shall not be exclusive and are

in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach and shall not constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

34. **Termination for Cause.** If the County determines that there has been a material breach of this Contract by Contractor that poses a threat to health and safety, the County may immediately terminate the Contract. In addition, if any of the following occur, County shall have the right to terminate this Contract effective immediately upon giving written notice to the Contractor:
- a. Contractor is adjudged to be bankrupt or should have a general assignment to the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency; or
 - b. Contractor fails to perform his duties to the satisfaction of the County; or
 - c. Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract; or
 - d. Contractor fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County; or
 - e. Any requisite licenses or certifications held by Contractor are terminated, suspended, reduced, or restricted; or
 - f. Contractor has failed or refused to furnish information or cooperate with any inspection, review or audit of Contractor's program or County's use of Contractor's program. This includes interviews or reviews of records in any form of information storage.

All obligations to provide services shall automatically terminate on the effective date of termination. For all other material breaches of this Contract, County must give Contractor written notice setting forth the nature of the breach. If Contractor fails to remedy said breach within ten (10) days from the date of the written notice, County may terminate the Contract. Contractor shall thereafter have no further rights, powers, or privileges against County under or arising out of this Contract. In the event a breach does not result in termination, but does result in costs being incurred by County, said costs shall be charged to and paid by Independent Contractor, which costs may include, but are not limited to, costs incurred by County in investigating and communicating with Contractor regarding said breach, including staff time.

35. **Termination for Convenience.** Either party may terminate this Contract at any time by giving the other party at least ninety (90) day's written notice of termination for convenience ("Notice of Termination for Convenience"). Termination for convenience shall be effective at 11:59 p.m., Pacific Standard Time, on the intended date for termination (the "Termination Date"). The terminating party shall deliver to the other party a notice specifying the date upon which such termination will become effective, which shall be at least thirty (30) days after the date of the notice. Termination for convenience shall have no effect upon the rights and obligations of the parties arising out of any services which were provided prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of termination. After receiving a Notice of Termination for Convenience, Contractor shall, unless directed by County, place no further subcontracts for services or materials, terminate all subcontracts to the extent they relate to the work terminated, and settle all outstanding liabilities arising from the termination of subcontracts.
36. **Power to Terminate.** Termination of this Contract may be effectuated by the General Services Agency Director without the need for action, approval, or ratification by the Board of Supervisors.
37. **Delegation of Authority.** The Board of Supervisors delegates to the County of San Luis Obispo General Services Agency Director the authority to amend the Contract to extend the term of this Contract, provide for additional services and/or increase compensation to Contractor in an amount not to exceed the lesser of the following amounts: ten percent (10%) of the Contract total or twenty-five thousand dollars (\$25,000.00). The Board of Supervisors delegates the authority to the County of San Luis Obispo General Services Agency Director to amend this Contract to extend its term up to one additional year. Any amendment made pursuant to a delegation of authority will only be effective if, prior to the

commencement of services or extension of the Contract, the amendment is memorialized in writing, is approved by County Counsel, and is signed by the County of San Luis Obispo General Services Agency Director.

38. **Disentanglement.** Contractor shall cooperate with County and County's other contractors to ensure a smooth and timely transition at the time of termination of this Contract, regardless of the nature or timing of the termination. Contractor shall cooperate with County and otherwise take all steps reasonably required to assist County in effecting a complete and timely transition to ensure that there is no interruption of the Services required under this Contract and there is no adverse impact on the supply of Products and/or Services required under this Contract. Contractor shall provide County with all information regarding the Services or is otherwise needed for the disentanglement. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, held by Contractor, and after return of same.
39. **Governing Law.** This Contract shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of San Luis Obispo. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of San Luis Obispo and waive all venue objections.
40. **California Title 24, Energy Standards.** Contractor recognizes that the State of California Administrative Code, Title 24 contains mandatory standards and policies relating to energy efficiency in the state energy conservation plan, and recognizes it may have applicability to Contractor.
41. **Compliance re: Environmental Laws.** For contracts in excess of \$100,000 Contractor shall comply with Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations, (40 C.F.R. Part 15).

EXHIBIT B – SPECIAL CONDITIONS

1. **Defined Terms.**
 - a. Software
 - b. System
 - c. Hardware
 - d. Products
 - e. Acceptance
2. **Acceptance (Services).** Acceptance procedures for the Services will be as set forth in this Section. "Acceptance" shall be defined as the County's written agreement that the Implementation is complete such that the processing of internet traffic may be commenced. The County's refusal to provide such written agreement shall constitute a rejection of the Implementation as being complete. No payment for the Services will be due before Acceptance thereof. Any notice of rejection will explain how the Implementation fails to meet the requirements of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable efforts to remedy it promptly. The County, at its sole discretion, will have the option to re-perform the Acceptance test. If the Contractor is unable to remedy the deficiency within thirty (30) days of notice of rejection, the County shall have the option of terminating this Contract in its entirety for default.
3. **Acceptance (Systems).** Acceptance procedures for the System will be as set forth in this Section. Upon Contractor's written notification to County that Contractor has completed the installation of any one or more components of the System, and that such components are ready for testing, County shall begin pre-live performance testing in a non-production environment using the test procedures, standards and timelines contained in Exhibit ___, or such other standards as are mutually agreed upon in writing, to determine whether each component meets in all material respects the applicable Specifications and Acceptance Criteria set forth herein. After County has tested the component for a period of ___ days, County shall notify Contractor in writing that testing has occurred. If County determines that the components do not perform as provided for in this Contract, County shall deliver to Contractor, in writing, a report describing any discrepancies. Contractor shall correct the errors within ___ days after receiving the report. County may then re-test the component(s) for an additional test period of up to ___ days, at the end of which the process described above may be repeated, if deemed necessary by the County. Contractor will make a good faith effort to resolve the problem within thirty (30) days. Should Contractor fail to achieve Acceptable Performance of the System, the County may, at its election, pursue any remedies available to the County including, without limitation, (a) terminating this Contract; or (b) accepting the System at its then level of performance; or (c) permit testing to be further extended for such period as mutually agreed upon by the parties, in writing; or (d) accept those portions of the System that pass the Acceptance Criteria and require Contractor to correct the remaining portions, in which event County shall not be liable for any payments associated with the implementation of such remaining portions until they have been accepted by County; or (e) pursue such remedies as may be available to County at law or in equity.
4. **Manufacturer Warranty.** Any manufacturer warranties for any Products furnished under this Contract shall be passed through from Contractor to the County.
5. **Performance Warranty (Services).** Subject to any warranty exclusions otherwise set forth in this Contract, Contractor warrants that it will provide the Services in a commercially reasonable manner in substantial conformity with the Documentation (the "Performance Warranty"). Except as may be expressly agreed in writing by Contractor, Contractor's Performance Warranty does not apply to defects, problems, or failures caused by the County's nonperformance of obligations essential to Contractor's performance of its obligations.
6. **Performance Warranty (Hardware)** Subject to any warranty exclusions otherwise set forth in this Contract, Contractor warrants that each Hardware component, when delivered to County, will be in good operating condition, free from defects in material and workmanship. Contractor further warrants that each Hardware component will perform in accordance with the Specifications for a period of _____ months from the date of County's acceptance of the Hardware.

EXHIBIT C – STATEMENT OF WORK (to be inserted here)